IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4920 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KUVARSINH BHURSINH SOLANKI

Versus

ASSTT.DIRECTOR OF AGRICULTURE TRAINING & VISIT SCHEME

Appearance:

1. Special Civil Application No. 4920 of 2001

MR MAHESH BHAVSAR for Petitioner No. 1

MR MANISH J PATEL for Respondents No. 1-3

Ms. Shraddha Trivedi AGP for Respondent No. 4

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 26/11/2001

ORAL JUDGEMENT

Heard learned advocate Mr. Mahesh Bhavsar for the petitioner, Mr. Manish Patel for respondents No.1-3

and Ms. Shraddha Trivedi, learned AGP for respondent No. 4.

Rule. Service of rule is waived by Mr. Manish Patel, learned advocate appearing for respondents No. 1-3 and Ms. Shraddha Trivedi, the learned AGP appearing for respondent No.4. In the facts and circumstances of the case and with the consent of the learned advocates for the parties, the matter is taken up for final hearing today.

Brief facts of the present petition are to the effect that the father of the petitioner joined the services under the respondents on 14th February, 1983 as Gram Sevak at Haripura, Taluka Bayad, District Sabarkantha and during the course of service, father of the petitioner died on 30th September, 1998. According to the petitioner, he has passed the SSC & HSC Examinations and he is qualified and eligible for being appointed to the post of Gram Sevak on compassionate grounds as there was no earning member in the family of the petitioner.The petitioner has, therefore, submitted an application for appointing him as such on compassionate grounds. Respondent No.3, in response to the application made by the petitioner for appointment on compassionate ground, informed the petitioner by letter dated 2nd December, 1999 that the income of the family of the petitioner is more than the ceiling limit prescribed for appointment on compassionate ground and, therefore, on that ground, the application of the petitioner for compassionate appointment has been rejected. According to the petitioner, thereafter, several representations were made but no positive reply has been given by the respondents and, therefore, the petitioner has filed the present petition before this Court.

During the pendency of this petition before this Court, this Court (Coram : C.K. Buch, J.) has passed an order on 24th August, 2001 wherein the learned advocate Mr. Manish Patel appearing for respondents No.1-3 has fairly accepted that on detailed inquiry, it transpired that the family of the deceased does not have any income which can be said to be exceeding Rs.2,500.00, if the amount of family pension received by the widow of the deceased employee is excluded for the purpose of granting compassionate appointment. In the said order, this Court has also observed that the decision of this Court (Coram : P.B. Majmudar,J.) in special civil application no. 799 of 2001 is very clear on the point and the same squarely applies to the facts of this case. Under the circumstances, this Court by order dated 24.8.2001, has

directed the District Development Officer, Sabarkantha to file affidavit disclosing the above mentioned fact.

Pursuant to the order dated 24.8.2001 passed by this Court in the present petition, respondent No.3 Deputy District Development Officer has filed detailed affidavit in reply to the present petition on 28.9.2001. The main contention raised by respondents no.2 and 3 in the reply is that the application of the petitioner has been rejected mainly in view of the Government Resolutions dated 14.8.1997, 24.2.1999, 1.9.1999 and 23.9.1999. According to the deponent of the said affidavit in reply, the Government has fixed the limit for granting appointment on compassionate ground. That factual aspect has been narrated by the deponent of the affidavit in reply in para 4 as under :

"4. It is further submitted that as per above circulars income of family pension be calculated for deciding of application for compassionate appointment. The petitioner's family income at the time of deceased employee are as under:

Family pension Rs.2687.00
Dearness Allowance Rs.0592.00 (22%)
Medical Rs. 100.00
Monthly Agreelculture Rs. 288.33

Rs.3667.33"

Therefore, according to the respondents, if the pension amount is excluded as an income of the family, then, there is no income which is beyond the ceiling limit fixed but according to them, considering the Government Resolutions, request made by the petitioner for employment on compassionate ground has been rejected.

Learned advocate Mr.Bhavsar appearing for the petitioner has submitted that the very question has been considered by this Court (Coram : P.B.Majmudar,J.) in special civil application No. 799 of 2001 on 15.6.2001 relying upon the earlier decision of this court in special civil application no. 11020 of 1993 decided on 1st January, 1999 wherein this court has directed to consider the case of that petitioner in light of the observations made by this court and, therefore, this decision is squarely applicable to the facts of the present case.

Learned advocate Mr. Manish Patel has submitted that if this Court will direct the respondent authority

to reconsider the case of the petitioner in light of the decision of this court dated 15th June, 2001 rendered in special civil application no. 799 of 2001, then, the respondent authority will certainly consider the case of the petitioner in light of the observations made by this court in the aforesaid decision and will pass appropriate order in accordance with law within some reasonable period.

Considering the averments made in the memo of petition and also considering the averments made in the affidavit in reply filed by the respondents and also considering the submissions made at the Bar by the learned advocates for the respective parties, it is directed to the respondents no.2 and 3 herein to reconsider the case of the petitioner in light of the observations made by this court in judgment dated 15th June, 2001 rendered in special civil application no. 799 of 2001 and to pass appropriate speaking orders in accordance with law without influenced by the earlier order dated 2nd December, 1999 and to pass fresh order within two months from the date of receipt of certified copy of this order.

With these observations and directions, present petition is disposed of. Rule is made absolute in terms indicated hereinabove with no order as to costs. Direct Service is Permitted.

26.11.2001. (H.K. Rathod,J.)

Vyas